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A parent's guide to Section 504 in public schools

This important civil rights law can provide educational benefits to kids with learning disabilities and/or ADHD in public schools.

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Section 504 — just what exactly is it? You've probably heard about it, but every school district addresses Section 504 in a different manner. Some districts have even been heard to say, "We don't do that in this district." But in fact, compliance to Section 504, which is a federal statute, is not optional. This article attempts to answer basic questions pertaining to the implementation of Section 504 in public school systems.

What is Section 504?

Section 504 is a part of the Rehabilitation Act of 1973 that prohibits discrimination based upon disability. Section 504 is an anti-discrimination, civil rights statute that requires the needs of students with disabilities to be met as adequately as the needs of the non-disabled are met.

Section 504 states that: "No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance…" [29 U.S.C. §794(a), 34 C.F.R. §104.4(a)].

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To be covered under Section 504, a student must be “qualified ” (which roughly equates to being between 3 and 22 years of age, depending on the program, as well as state and federal law, and must have a disability) [34 C.F.R. §104.3(k)(2)].

Who is an “individual with a disability”?

As defined by federal law: “An individual with a disability means any person who: (i) has a mental or physical impairment that substantially limits one or more major life activity; (ii) has a record of such an impairment; or (iii) is regarded as having such an impairment” [34 C.F.R. §104.3(j)(1)].

What is an “impairment” as used under the Section 504 definition?

An impairment as used in Section 504 may include any disability, long-term illness, or various disorder that “substantially” reduces or lessens a student’s ability to access learning in the educational setting because of a learning-, behavior- or health-related condition. [“It should be emphasized that a physical or mental impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities” (Appendix A to Part 104, #3)].

Many students have conditions or disorders that are not readily apparent to others. They may include conditions such as specific learning disabilities, diabetes, epilepsy and allergies. Hidden disabilities such as low vision, poor hearing, heart disease or chronic illness may not be obvious, but if they substantially limit that child’s ability to receive an appropriate education as defined by Section 504, they may be considered to have an “impairment” under Section 504 standards. As a result, these students, regardless of their intelligence, will be unable to fully demonstrate their ability or attain educational benefits equal to that of non-disabled students (The Civil Rights of Students with Hidden Disabilities under Section 504 of the Rehabilitation Act of 1973—Pamphlet). The definition does not set forth a list of specific diseases, conditions or disorders that constitute impairments because of the difficulty of ensuring the comprehensiveness of any such list. While the definition of a disabled person also includes specific limitations

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only physical and mental impairments are included, thus "environmental, cultural and economic disadvantage are not in themselves covered" (Appendix A to Part 104, #3).

What are "major life activities"?

Major life activities include, but are not limited to: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, concentrating, interacting with others and working. As of January 1, 2009 with the reauthorization of the Americans with Disabilities Amendment Act, this list has been expanded to also include the life activities of reading, concentrating, standing, lifting, bending, etc. This may include individuals with AD/HD, dyslexia, cancer, diabetes, severe allergies, chronic asthma, Tourette 's syndrome, digestive disorders, cardiovascular disorders, depression, conduct disorder, oppositional defiant disorder, HIV/AIDS, behavior disorders and temporary disabilities (e.g., broken writing arm, broken leg, etc.). Conditions that are episodic or in remission are also now covered if they create a substantial limitation in one or more major life activity while they are active. Students who are currently using illegal drugs or alcohol are not covered or eligible under Section 504.

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What does "substantially limits" mean?

Substantially limits is not defined in the federal regulations. However, in a letter from the Office for Civil Rights (OCR), they state, "this is a determination to be made by each local school district and depends on the nature and severity of the person's disabling condition." New guidance from the Americans with Disabilities Amendment Act states that Section 504 standards must conform with the ADAAA and is "intended to afford a broad scope of protection to eligible persons." In considering substantial limitations,

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population and without benefit of medication or other mitigating measures such as learned behavioral or adaptive neurological modifications, assistive technology or accommodations.

Who can refer a child for consideration for evaluation under Section 504?

Anyone can refer a child for evaluation under Section 504. However, while anyone can make a referral, such as parents or a doctor, OCR has stated in a staff memorandum that “the school district must also have reason to believe that the child is in need of services under Section 504 due to a disability” (OCR Memorandum, April 29, 1993). Therefore, a school district does not have to refer or evaluate a child under Section 504 solely upon parental demand. The key to a referral is whether the school district staff suspects that the child is suffering from a mental or physical impairment that substantially limits a major life activity and is in need of either regular education with supplementary services or special education and related services [letter to Mentink, 19 IDELR 1127 (OCR) 1993]. If a parent requests a referral for evaluation, and the school district refuses, the school district must provide the parent with notice of their procedural rights under Section 504.

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eligible for services under Section 504?

According to the federal regulations: "...placement decisions are to be made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, placement options, least restrictive environment requirements, and comparable facilities" [34 C.F.R. §104.35(c)(3)].

Unlike Special Education (https://www.greatschools.org/gk/articles/special-education-special-needs-learning-disabilities/), the federal regulations for Section 504 do not require or even mention that parents are to be a part of the decision-making committee. The decision to include parents in the decision-making committee is a determination that is made by each school district and should be spelled out in the district's procedures for implementing Section 504. Parents should at least be asked and encouraged to contribute any information that they may have (e.g., doctor's reports, outside testing reports, etc.) that would be helpful to the Section 504 committee in making their determination of what the child may need. Schools are expected to make sound educational decisions as to what the child needs in order to receive an appropriate education.

What information is used in doing an evaluation under Section 504?

Under Section 504, no formalized testing is required. The 504 Committee should look at grades over the past several years, teacher's reports, information from parents or other agencies, state assessment scores or other school administered tests, observations, discipline reports, attendance records, health records and adaptive behavior information. Schools must consider a variety of sources. A single source of information (such as a doctor's report) cannot be the only information considered. Schools must be able to assure that all information submitted is documented and considered.

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without my knowledge?

No. Parents must always be given notice before their child is evaluated and/or placed under Section 504 (34 C.F.R. §104.36). Parents must also be given a copy of their child's Section 504 accommodation plan if the committee determines that the child is eligible under Section 504.

What types of accommodations will my child receive if determined eligible under Section 504?

Each child's needs are determined individually. Determination of what is appropriate for each child is based on the nature of the disabling condition and what that child needs in order to have an equal opportunity to compete when compared to the non-disabled. There is no guarantee of A's or B's or even that the student will not fail. Students are still expected to produce. The ultimate goal of education for all students, with or without disabilities, is to give students the knowledge and compensating skills they will need to be able to function in life after graduation.

Accommodations that may be used, but are not limited to, include:

- Highlighted textbooks
- Extended time on tests or assignments
- Peer assistance with note taking
- Frequent feedback
- Extra set of textbooks for home use
- Computer aided instruction
- Enlarged print
- Positive reinforcements
- Behavior intervention plans
- Rearranging class schedules

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- Preferred seating assignments
- Taping lectures
- Oral tests
- Individual contracts

Will my child still be in the regular classroom or will he be in a “special class”?

A Section 504 eligible child will always be in the regular classroom unless (according to federal regulations): “… the student with a disability is so disruptive in a regular classroom that the education of other students is significantly impaired, then the needs of the student with a disability cannot be met in that environment. Therefore, regular placement would not be appropriate to his or her needs and would not be required by §104.34” (34 C.F.R. §104.34, Appendix A, #24).

Can my child still be disciplined under Section 504?

Yes. Children under Section 504 are still expected to follow the district’s student code of conduct. However, when disciplining a child under Section 504, schools must consider the relationship between the disability and the misbehavior if the child is going to be removed from the regular setting for longer than 10 days. This does not mean that a student with a disability cannot be sent to a discipline center or that they cannot go to in-school suspension, or be suspended from school for three days. Very strict guidelines exist for schools in discipline issues with students who have a disability under Section 504. Your campus or district 504 coordinator can assist you in this area should you have additional questions concerning the discipline of students with disabilities. Children having disabilities with behavioral components should have individual discipline plans as well as behavior intervention plans.

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the school district pay for an outside independent evaluation?

Under Section 504, schools are not required to pay for an outside independent evaluation. If a parent disagrees with the school's evaluation decision, they may request a due process hearing or file a complaint with the Office for Civil Rights. (Ask your district or campus for a copy of Notice of Parent and Student Rights Under Section 504 of the Rehabilitation Act of 1973.)

How often will my child be re-evaluated?

While there are no specific time lines on this issue, students must be re-evaluated at least every three years or whenever there is going to be a "significant change in placement." The campus 504 committee should re-evaluate your child's plan every year to make sure that his or her accommodation plan is appropriate based on their current schedule and individual needs. The accommodation plan may be revised at any time during the school year if needed.

Will my child still be able to participate in nonacademic services?

Yes. Districts must provide equal opportunity in areas such as counseling, physical education and/or athletics, transportation, health services, recreational activities, and special interest groups or clubs. However, the "no pass, no play " standard used for students in most states also applies to students under Section 504 (34 C.F.R. §104.37).

What are my rights as a parent under Section 504?

As a parent or legal guardian, you have the right to:

1. Receive notice regarding the identification, evaluation and/or placement of your child;

2. Examine relevant records pertaining to your child;

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identification evaluation, or placement of your child, with an opportunity for the parent/guardian to participate in the hearing, to have representation by an attorney, and have a review procedure;

4. File a complaint with your school District Section 504 Coordinator, who will investigate the allegations regarding Section 504 matters other than your child's identification, evaluation and placement.

5. File a complaint with the appropriate regional Office for Civil Rights. For additional information, contact: U.S. Department of Education, Washington, D.C. 20202-1100
(800) 421-3481
www.ed.gov/ocr
E-mail: ocr@ed.gov

Do I contact the State Education Agency (SEA) if I have a complaint concerning Section 504?

No. The State Education Agency has no direct jurisdiction over Section 504 implementation. Complaints may be addressed to your local District 504 Coordinator or to the Office for Civil Rights.

One note of caution: Please do not substitute this information for independent and individual legal advice. Such advice should be sought from a licensed, qualified attorney in the field of Section 504 disabilities. Every situation is different, and a good assessment of the risks involved in your particular situation can only be determined by consulting with your attorney and providing him or her with all of the relevant factual data. Sometimes just one "minor" detail can make a material difference in the outcome of a case.

Understood.org (http://understood.org) is a comprehensive resource for parents of kids with learning and attention issues. Explore their 504 plan tools, including this Sample 504 Plan for a Child With ADHD. (https://www.understood.org/en/school-learning/special-services/504-plan/is-there-a-standard-form-or-template-for-504-plans)

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